

**§ 118.4 Responsibilities of a CES operator.**

By signing the agreement and commencing operation of a CES, an operator agrees to:

(a) Maintain the facility designated as the CES in conformity with the security standards as outlined in the approved application;

(b) Provide adequate personnel and equipment to ensure reliable service for the opening, presentation for inspection, and closing of all types of cargo designated for examination by Customs. Such service must be provided on a "first come-first served" basis;

(c) Assess service fees as outlined in the fee schedule included in the approved application or as changed under § 118.5 of this part and bill users directly for services rendered;

(d) Assume responsibility for any charges or expenses incurred in connection with the operation of the CES;

(e) Maintain, at his own expense, adequate liability insurance with respect to the property within his control and with respect to persons having access to the CES;

(f) Keep current the list filed with the port director pursuant to § 118.11(f) of this part. Additions to or deletions from the list must be submitted in writing to the port director within 10 calendar days of the commencement or termination of employment;

(g) Maintain a Customs custodial bond in an amount set by the port director. The CES operator will accept and keep safe all merchandise delivered to the CES for examination. The bond will include liability for transporting merchandise to the CES from within the district boundaries (see definition of "district" at § 112.1); such liability is assumed by the CES operator when he picks up merchandise for transportation to his facility. The operator also agrees to increase the amount of the bond if deemed appropriate by the port director.

(h) Maintain and make available for Customs examination all records connected with the operation of the CES in accordance with part 162 of this chapter and retain such records for a period of not less than five years from the date of the transaction or examina-

tion conducted pursuant to the agreement to operate the CES;

(i) Submit, if requested by Customs, the fingerprints of all employees involved in the CES operation;

(j) Provide office space, parking spaces, appropriate sanitary facilities, and potable water to Customs personnel at no charge or a charge of \$1 per year; and

(k) Perform in accordance with any other reasonable requirements imposed by the port director.

(l) Provide transportation for merchandise to the CES from within the district boundaries (see definition of "district" at § 112.1). This responsibility is optional. If the CES operator chooses to provide transportation, he shall receipt for the merchandise when he picks it up and assume liability for the merchandise at that time.

[T.D. 93-6, 58 FR 5604, Jan. 22, 1993, as amended by T.D. 94-81, 59 FR 51495, Oct. 12, 1994; T.D. 95-77, 60 FR 50020, Sept. 27, 1995; T.D. 98-29, 63 FR 16684, Apr. 6, 1998]

**§ 118.5 Procedures for changes to a fee schedule.**

Whenever a CES operator intends to increase, add to or otherwise change the service fees set forth in the fee schedule referred to in § 118.4(c) of this part, the operator shall provide 90 calendar days advance written notice to the port director of such proposed fee schedule change and shall include in the notice a justification for any increased or additional fee. Following receipt of this written notice, the port director will advise the public of the proposed fee schedule change and invite comments thereon under the public notice and comment procedures set forth in § 118.2 of this part. After a review of the proposed fee schedule change and any public comments thereon, and based on the principle of comparability set forth in § 118.11(c) of this part, the port director will decide whether to approve the change, will notify the CES operator in writing of his decision, and will notify the public of any approved fee schedule change by the same methods that were used to provide the public with notice of the proposed change. A CES operator shall remain bound by the existing fee schedule and shall not implement any fee schedule change

prior to receipt of written approval of the change from the port director.

### **Subpart B—Application To Establish a CES**

#### **§ 118.11 Contents of application.**

Each application to operate a CES shall consist of the following information, any application not providing all of the specified information will not be considered, and the responses to paragraphs (b), (c), (d), (g) and (h) of this section shall constitute the criteria used to judge the application:

(a) The name and address of the facility to be operated as the CES, the names of all principals or corporate officers, and the name and telephone number of an individual to be contacted for further information;

(b) A description of the CES's accessibility within the port or other location, and a floor plan of the facility actually dedicated to the CES operation showing bay doors, office space, exterior features, security features, and staging and work space. Where a significant capital expenditure would be required in order for an existing facility to meet security or other physical or equipment requirements necessary for the CES operation, the applicant may request in the application time to conform the facility to such requirements. The agreement referred to in § 118.3 of this part shall not be executed, in any event, until the facility is conformed to meet the requirements;

(c) A schedule of fees clearly showing what the applicant will charge for each type of service. Subject to any special costs incurred by the applicant such as facility modifications to meet specific cargo handling or storage requirements or to meet Customs security standards, the fees set forth in the schedule shall be comparable to fees charged for similar services in the area to be served by the CES;

(d) A detailed list of equipment showing that the applicant can make a diverse variety of cargo available for examination in an efficient and timely manner;

(e) A copy of an approved custodial bond on Customs Form 301. If the applicant does not possess such a bond, a completed Customs Form 301 must be

included with the application for approval as a prerequisite to selection;

(f) A list of all employees involved in the CES operation setting forth their names, dates of birth, and social security numbers. (Providing social security numbers is voluntary; however, failure to provide the number may hinder the investigation process.);

(g) Any information showing the applicant's experience in international cargo operations and knowledge of Customs procedures and regulations; and

(h) Any other information to address any local criteria that the port director considers essential to the selection process based on port conditions.

[T.D. 93-6, 58 FR 5604, Jan. 22, 1993; 58 FR 6574, Jan. 29, 1993, as amended by T.D. 98-29, 63 FR 16684, Apr. 6, 1998]

#### **§ 118.12 Action on application.**

Following submission of all applications in accordance with §§ 118.2 and 118.11 of this part, the port director will advise the public of the applications received and invite comments thereon under the public notice and comment procedures set forth in § 118.2; with regard to each application, the notice will set forth the name of the applicant, the address of the facility proposed to be operated as the CES, the proposed fee schedule, the list of equipment at the facility, and the number of employees to be involved in the CES operation. The port director, based on a review of all applications under the criteria set forth in § 118.11 and any public comments submitted under § 118.2 or this section, shall determine whether a CES operator should be selected and, if a CES operator is to be selected, shall select the applicant that will best meet the examination needs of Customs and facilitate the movement of merchandise.

[T.D. 93-6, 58 FR 5604, Jan. 22, 1993, as amended by T.D. 99-64, 64 FR 43266, Aug. 10, 1999]

#### **§ 118.13 Notification of selection or nonselection.**

The applicant selected to operate a CES will be notified in writing by the port director of his tentative selection. The selection shall become final upon execution of the written agreement between Customs and the applicant under § 118.3 of this part, and the port director